

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DATE: September 27, 2010

JUDGE
LEONARD DAVIS

REPORTERS: Shea Sloan & Judy Werlinger

LAW CLERKS: Kori Anne Bagrowski

MIRROR WORLDS, LLC V APPLE, INC.	CIVIL ACTION NO: 6:08-CV-88 JURY TRIAL - DAY 1
ATTORNEYS FOR PLAINTIFFS Ken Stein (Strook & Stroock & Lavan) Ian Dibernardo (Strook & Stroock & Lavan) Alex Solo (Strook & Stroock & Lavan) Joe Diamante (Strook & Stroock & Lavan) Otis Carroll (ICK Law Firm) David Gelernter, Inventor	ATTORNEY FOR DEFENDANT Jeff Randall (Paul Hastings Janofsky & Walker) Allan Soobert (Paul Hastings) Christian Platt (Paul Hastings) Bud Tribble, Client Representative

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 8:40 am.

ADJOURN: 4:50 pm

TIME:	MINUTES:
8:40 am	Trial Commenced. Jury not present in the courtroom.
	Court addressed the parties regarding the pretrial matters to be taken up.
	Mr. Carroll addressed the Court regarding Limine issues. MIL 1 - granted. Mr. Randall responded as it relates to damages and hypothetical negotiations. Mr. Carroll responded. MIL #1 - granted. Mr. Carroll presented MIL #2 regarding inequitable conduct issue. Mr. Randall responded. MIL #2 - granted. Mr. Carroll presented MIL #4 regarding improper inventorship. Mr. Randall responded. MIL #4 - denied. Mr. Carroll asked for a qualification. Mr. Carroll presented MIL #6 regarding other litigation. Mr. Randall responded. MIL #6 - denied. Mr. Carroll presented MIL #7 regarding claims of the '227 found invalid. MIL#7 - granted. Mr. Carroll presented MIL #10 regarding 3 rd party inventors outside the prior art reference. Mr. Randall responded. MIL #10 - denied.
	Court explained the rulings being without prejudice to raising at time of testimony during trial.

DAVID J. MALAND, CLERK

FILED: 9.27.2010

BY: Rosa L. Ferguson, Courtroom Deputy

PAGE 2 - Proceedings Continued

TIME:	MINUTES:
	Mr. Carroll presented MW's MIL #9 regarding other patents (prior art patents), counterclaim patents, or an instruction that they not be considered as a defense to infringement. Mr. Randall responded. Court will consider any instruction the parties wish to propose.
	Mr. Randall presented Apple's MIL #1 regarding Intellectual Ventures. Mr. Carroll responded. Apple's MIL #1 - denied. Mr. Randall presented Apple's MIL #2 regarding worldwide sales. Mr. Carroll responded. Mr. Randall replied. Court inquired as to case law. Mr. Carroll will withdraw that slide. Apple's MIL #2 - granted. Mr. Randall presented Apple's MIL #5 regarding alleged notice to Apple of MW patents. Mr. Carroll responded. Apple's MIL #5 - denied.
	Mr. Carroll addressed the Court regarding Juror Notebooks and disagrees with Apple to include prior art references. Mr. Randall responded as to 6 patents and 3 articles. Mr. Carroll further responded.
	Court will allow with patents only, When Apple gets to invalidity, they can be passed to the jury. Mr. Randall responded.
	Court will allow the Jury Notebooks and will go with just the patents and claim construction chart and no prior art.
	Mr. Carroll addressed the Court on Mr. Tribble regarding a brief 2-hour deposition. Mr. Stein addressed the Court. Mr. Carroll further. Mr. Randall responded that Mr. Tribble was previously offered, but MW declined. Mr. Stein responded. Court inquired as to what Mr. Tribble would be testifying to. Mr. Randall responded.
	Court will allow a one-hour deposition.
	Mr. Randall asked to invoke the Rule, including Dr. Gelernter. Mr. Carroll responded and they designated him as their corporate representative during jury selection. Mr. Randall responded. Mr. Carroll responded. Court will allow MW to designate Dr. Gelernter as their corporate representative. Court inquired what the prejudice is. Mr. Randall responded. Mr. Carroll responded. Court stands by its ruling.
	Mr. Randall addressed the Court regarding substantial prior art and asked that no presumption of validity attach to the patents-in-suit. Court denied request.
	Mr. Randall addressed the Court regarding the clear-and-convincing-evidence standard to prove invalidity should not attach to the prior art that was not considered by the Patent Office. Court denied request
	Court inquired if parties resolved the issue of the supplemental report of Levy. (Docket #389). Mr. Randall presented the motion to strike. Mr. Stein responded. Mr. Randall replied. Court denied Motion.
	Court asked for the Jury to be brought in.
9:10 am	Court in recess for 5 minutes.
9:20 am	Trial resumed. Jury seated in the courtroom.
	Court addressed the Jury and apologized for the delay. Court welcomed the Jury back and gave them some preliminary instructions.

PAGE 3 - Proceedings Continued

TIME:	MINUTES:
	Court will allow 30 minutes for opening statements. Court inquired of the jury if they need a short break before opening statements. Court advised Jury that he has Court recognized Plaintiff for purposes of opening statements.
	Mr. Carroll presented opening statements to the Jury. (Technical difficulties – Clerk turned projector off instead of dimming lights - Joy – it's a Monday!)
9:55 am	Court in recess for 5 minutes to get projector rebooted and to come back on.
10:05 am	Jury seated in the courtroom.
	Mr. Carroll continued with opening statements to the Jury on behalf of Plaintiff, Mirror Worlds.
	Mr. Randall presented opening statements to the Jury on behalf of Plaintiff, Mirror Worlds.
	Court addressed the Jury and Court would like to swear in all of the witnesses.
	David Gelernter, Bud Tribble, John Levy, Walter Bratic, Steve Feiner, Keith Ugone. Witnesses sworn by the Clerk. Court advised the parties of the Rule being invoked. Court explained the Rule to the witnesses and excused those that are not client representatives or experts from the courtroom.
	Court addressed the parties on exhibits and the Court's practice to offer and admit.
	Court advised parties to get their lists and exchange them and them offer them after the lunch hour.
	Mr. Carroll called DAVID GELERNTER to the witness stand. Witness previously sworn.
	Direct examination of Dr. Gelernter by Mr. Carroll.
11:45 am	Court in recess until 1:00 pm. Court reminded the Jury of its instructions.
1:00 pm	Jury seated in the courtroom.
	Direct examination of Dr. Gelernter by Mr. Carroll continued.
	Mr. Carroll passed the witness. Mr. Randall asked to approach the bench. (Bench conference held).
	Cross examination of Dr. Gelernter by Mr. Randall.
3:05 pm	Court in recess until 3:20 pm.
3:20 pm	Trial resumed. Jury seated in the courtroom.
	Cross examination of Dr. Gelernter by Mr Randall continued. Mr. Carroll objected to line of questioning. Court asked counsel to approach bench. (Bench conference held).
	Cross examination of Dr. Gelernter by Mr. Randall continued.
	Mr. Randall passed the witness. No further questions of this witness.

PAGE 4 - Proceedings Continued

TIME:	MINUTES:
	Court addressed the Jury regarding making up some time, either starting early in the morning, shorter lunch, or stay later and to discuss. Court reminded the Jury of its instructions.
4:45 pm	Court in recess until 9:00 a.m.
	Court addressed the parties regarding exhibits.
	Court inquired of Mr. Carroll who his next witness would be. Mr. Carroll responded that it would be Michael Satow.
	Court gave the parties their times for the day. Plaintiff has used 1:56 minutes and Defendant 2:07 minutes. Court encouraged parties to hone down witnesses and examinations.
	Mr. Randall inquired of witnesses. Court asked parties to exchange lists and meet and confer.
4:50 pm	There being nothing further, Court adjourned for the day.